On Buying and Selling (1605)

Leonardus Lessius, S.J.

**Dubitatio 1: Definition of Buying, Selling, and Business**

**Sale-Purchase**

[1] Answer: *A purchase* can be defined as *an agreement under which a price is given in exchange for a commodity*, whereas *a sale* is *an agreement under which a commodity is given in exchange for a price.* Three elements are required as to the form or substance of this contract: a commodity, a price, and mutual consensus.

**A Commodity**

*A commodity* is anything that is a possible object of a sale: all goods movable and immovable, claims and titles, which are usually estimated and compared in money; likewise, all present and future goods taken as a whole, because the latter can be sold through one act, even if they cannot be donated. The free faculty to make a will is not hampered by such a sale contract because it is possible to make

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2. Dig. 18, 1, 1.
3. Dig. 45, 1, 61.
a will about a price, yet, it is hampered indeed by a gratuitous donation. In the same way, a vacant inheritance is a commodity and a possible object of a sale. An inheritance, however, which has not yet been declared vacant, is not saleable; for example, when the testator is still alive. Such a sale is invalid because it is at variance with moral decency.\textsuperscript{4}

**Price**

*A price* consists of money, which was invented to be the measure and price of all things that come under human contracts, as Aristotle teaches.\textsuperscript{5} Money cannot be a commodity in itself, nor can it be sold as a commodity, except on the basis of its material or a circumstance extrinsic to its nature. Thus, money can be sold because it is old or beautiful, or convenient to transfer, or absent, or difficult to be claimed back, and so forth. Before money was introduced, sale-purchase as such did not exist, but merely barter.\textsuperscript{6} Money was invented, however, because barter was inconvenient.

**Agreement**

*It is an agreement* because this is the more general class to which sale and purchase belong as specific types of agreement. That is to say, sale and purchase are part of a single and uniform agreement, which in itself is a specific type of agreement understood in its most general concept. Out of sale and purchase a uniform agreement emerges that essentially includes the conformity of both. However distinct those parts may be, they are so inextricably bound up with each other, that it would be impossible to understand one part without understanding the other, as happens with all things so closely correlated to each other.

**Concluded by Consensus**

The sale-purchase contract consists of a naked agreement or arrangement between the parties involved. A conveyance of the commodity or the price is not required as to its substance because the contract is concluded by the sole

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\textsuperscript{4} Dig. 18, 4, 7.

\textsuperscript{5} *Ethica Nicomachea*, lib. 5, cap. 5.

\textsuperscript{6} Dig. 18, 1, 1.
consensus of the parties. Therefore, it is possible for absent people to contract, or to contract by means of a messenger, or by correspondence. However, for the ownership to be transferred, a conveyance is required. Consequently, unless conveyance on both sides has followed, the contract is still held to be invalid, for, although the contract is concluded as to its substance, the final complement at which the parties intend to arrive still lacks. Hence, whenever a punishment is imposed in buying and selling, this is always to be understood as concerning the acts concluded by either of the parties’ conveyance, unless the legislator holds an expressly different intention. Similarly, a stipulation is not required because we are dealing with a contract of good faith, and neither is a written document, unless the parties wish to draw up one before or after making the contract for the sake of greater security. In the latter case, the parties are held to suspend their ultimate consensus until the arrangement is sealed by script and reread.

**A Reciprocal Contract**

The phrases *a price in exchange for a commodity and a commodity in exchange for a price* clearly indicate that this contract is reciprocal and that it requires a counterpromise or mutual consent.

**Differences with Other Contracts**

These sentences make clear, too, that sale-purchase differs from donation and liberal promise as well as from all other contracts in which an interchange of things other than commodities and prices takes place, for example, in exchange, loan, and all innominate contracts. Similarly, lease and hire are different because the thing that is said to be let or hired is not given in return for a price but only conceded for use, even though it might seem as if the use itself is sold in a certain sense because it is conceded in return for a price. Properly speaking, however, it is not said to be sold; it is the thing that can be used rather than the use itself, which is the subject of the contract....

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7 See higher, lib. 2, cap. 17, dubit. 2, and Dig. 18, 1, 1 toward the end.
8 See, again, Dig. 18, 1, 1.
9 This is clear from the above said in cap. 3, dubit. 3.
10 See the teachings of Gomesius, Commentaria variaeque resolutiones iuris civilis, communis, et regii, tom. 2, cap. 2, num. 17.

Business is the activity through which a man acquires goods with the intention of making profits by selling them in a completely unaltered state. This is the definition maintained by Chrysostom and the canonists. They conceive of selling in a very wide sense, so as to include even barter, given that for the barbarians business consisted in barter, and that money-exchangers are doing business by bartering money. Business is not illicit as such, but rather indifferent because it can be directed toward a good, bad, or indifferent goal, as St. Thomas Aquinas demonstrates.

Against Thomas, you might object along with Chrysostomus that by evicting the sellers and buyers from the temple, the Lord has made it clear that a merchant can never please God and hence that no Christian should be a merchant. However, St. Thomas replies that what Chrysostomus has in mind is a man for whom profit constitutes the highest goal, a man who is prepared to commit mortal sin to make a profit (what most businessmen do) or, put differently, a man who is doing business by having recourse to fraud and perjury.

Dubitatio 2: The Equal or Just Price of Saleable Goods


The just price is held to be that price that is determined either by the public authorities in consideration of the common good or by the common estimation of people. A price, then, is imposed in one of two ways.

2. Two Ways of Imposing the Just Price

2.1. By the Prince

In the first case, the prince or magistrate fixes the price at which a particular good is to be sold by considering all the circumstances on which the estimation of goods depends, lest the buyers be deceived or forced to give in to the sellers’ whims. The doctors call this price the legal price, as though it were laid down by law. It is obvious that this price is to be held just (except maybe for the case

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11 Chrysostomus, Hom. 38 in Matthaeum 21, and Grat. D. 1, 88, 11.

12 Summa Theologiae, II, II, quaest. 77, art. 4.